

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

BRICKSTOP CORPORATION,)	Case Number: 1:08-cv-02690
)	
Plaintiff,)	Assigned Judge: Gettleman
)	
v.)	Designated
)	Magistrate Judge: Cole
VALLEY VIEW INDUSTRIES, H.C., INC.,)	
)	
Defendant.)	

DECLARATION OF MATTHEW B. WALTERS
IN SUPPORT OF PLAINTIFF'S REPLY SUGGESTIONS

I, Matthew B. Walters, declare:

1. I am a member in good standing of the bar of the state of Kansas, am admitted pro hac vice in the above-captioned case, and am an associate in the law firm Hovey Williams LLP, 10801 Mastin Blvd., Suite 1000, 84 Corporate Woods, Overland Park, Kansas 66210 and represent BrickStop Corporation ("BrickStop") in the above-captioned case. I have personal knowledge of the statements made herein.

2. This Declaration accompanies BrickStop's Reply to Valley View Industries, H.C., Inc.'s ("Valley View's") Memorandum of Law in Opposition to Plaintiff's Request for Preliminary Injunction.

3. Attached hereto as Exhibit A are true and accurate copies of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Attached hereto as Exhibit B is a true and accurate copy of [REDACTED]

[REDACTED]

5. Attached hereto as Exhibit C is a true and accurate copy of [REDACTED]
[REDACTED].
6. Attached hereto as Exhibit D is a true and accurate copy of [REDACTED]
[REDACTED].
7. Attached hereto as Exhibit E are true and accurate copies of engineering drawings produced by Valley View, which bear the bates labels [REDACTED], and VVW001856 – VVW001861.
8. Attached hereto as Exhibit F are true and accurate copies of email correspondence produced by Valley View, which bear bates labels [REDACTED]
[REDACTED] and VVW001915.
9. Attached hereto as Exhibit G are true and accurate copies of [REDACTED]
[REDACTED]
[REDACTED].
10. Attached hereto as Exhibit H is a true and accurate copy of excerpts from the transcript of the deposition of David Frieberg and [REDACTED]
[REDACTED].
11. Attached hereto as Exhibit I is a true and accurate copy of excerpts from the transcript of the deposition of Rubin Kurtz and [REDACTED]
[REDACTED].
12. Attached hereto as Exhibit J is a true and accurate copy of excerpts from the transcript of the deposition of Howard Rynberk.
13. Attached hereto as Exhibit K is a true and accurate copy of excerpts from the transcript of the deposition of Dominick Bertucci.

14. Attached hereto as Exhibit L is a true and accurate copy of a digital image I printed off of the Dreamscape website on August 22, 2008. I downloaded this image from the following url: www.yardproduct.com/popup_image.php?pID=374.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: August 22, 2008

By: 
Matthew B. Walters

Exhibit A

REDACTED

Exhibit B

REDACTED

Exhibit C

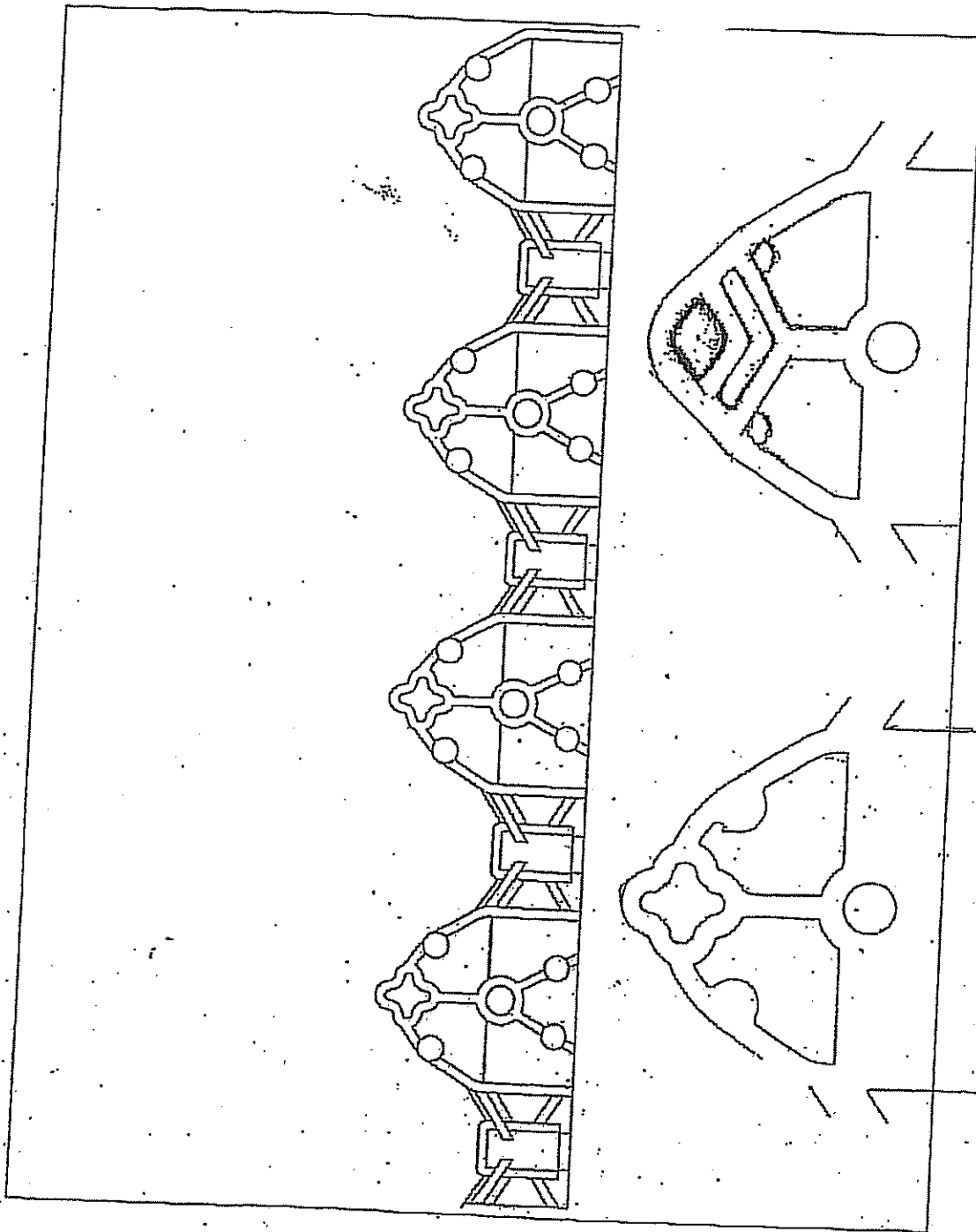
REDACTED

Exhibit D

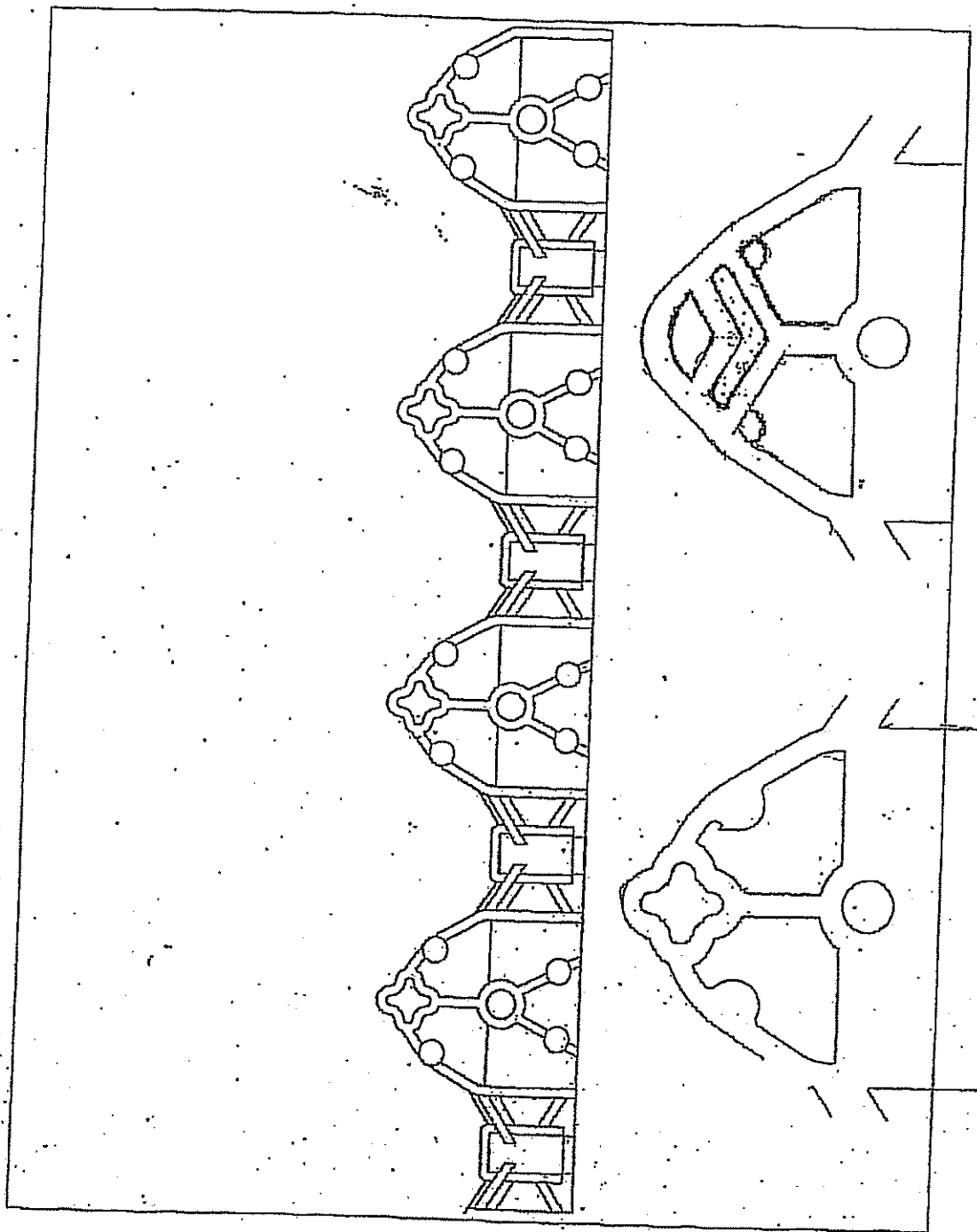
REDACTED

Exhibit E

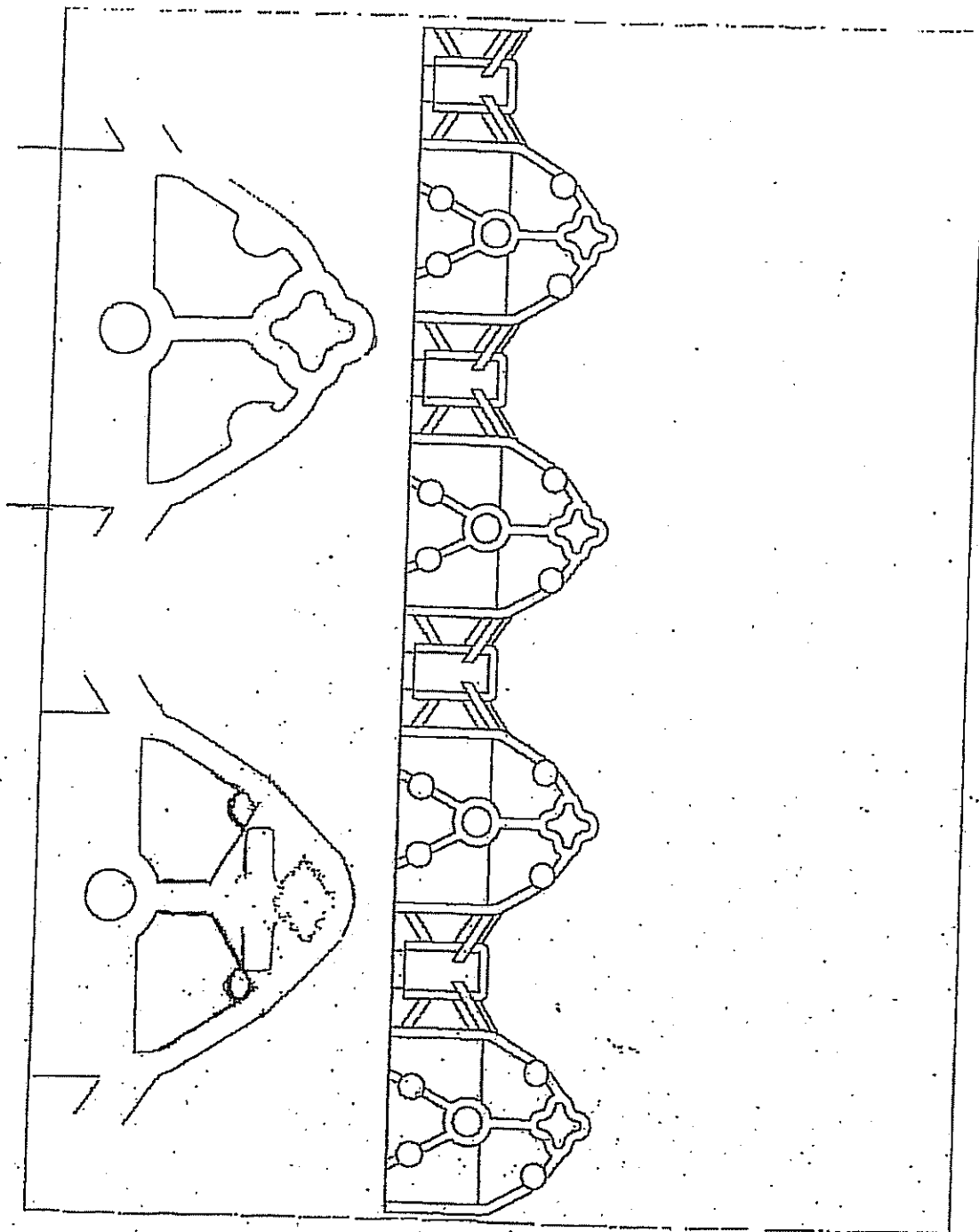
REDACTED



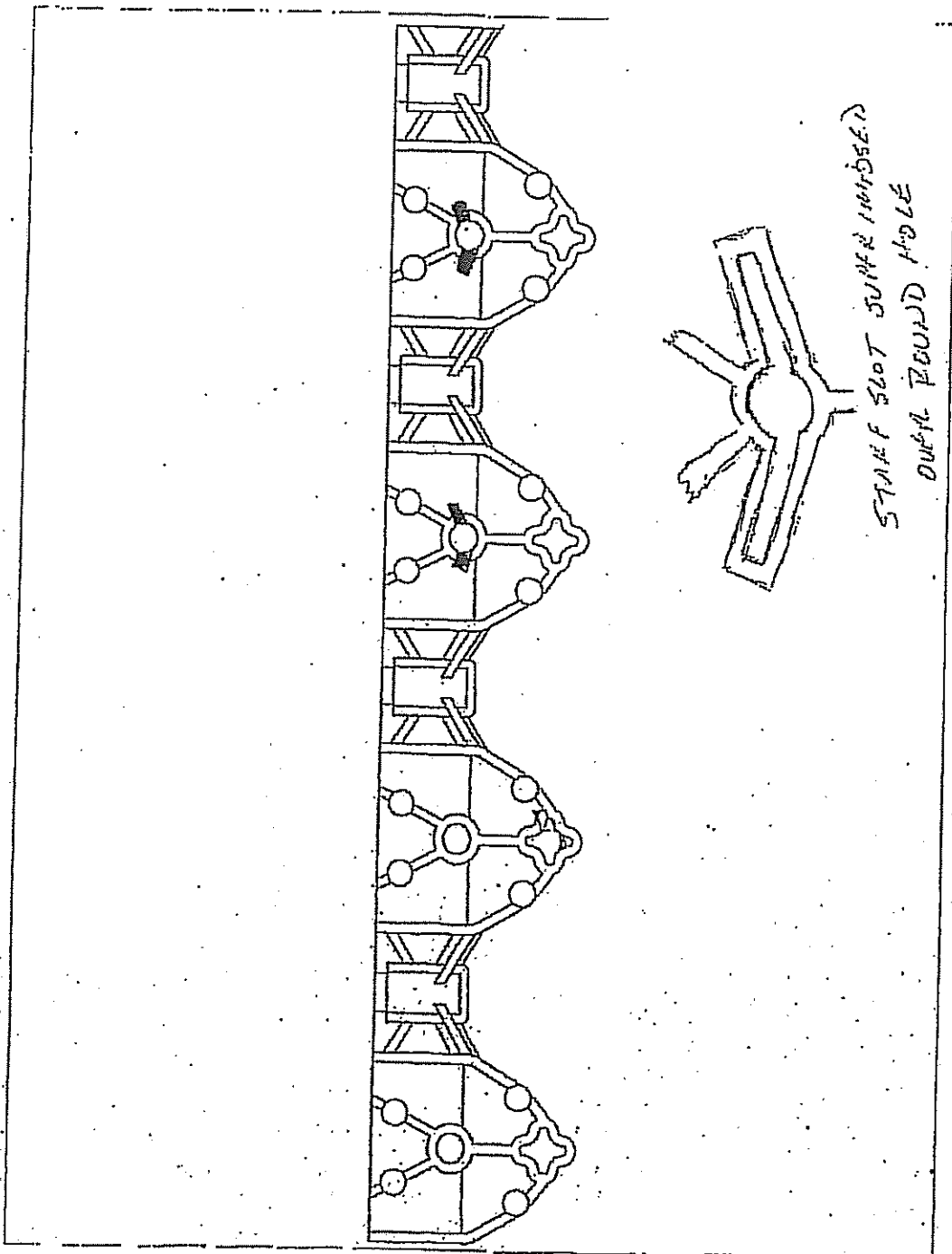
VVW001856



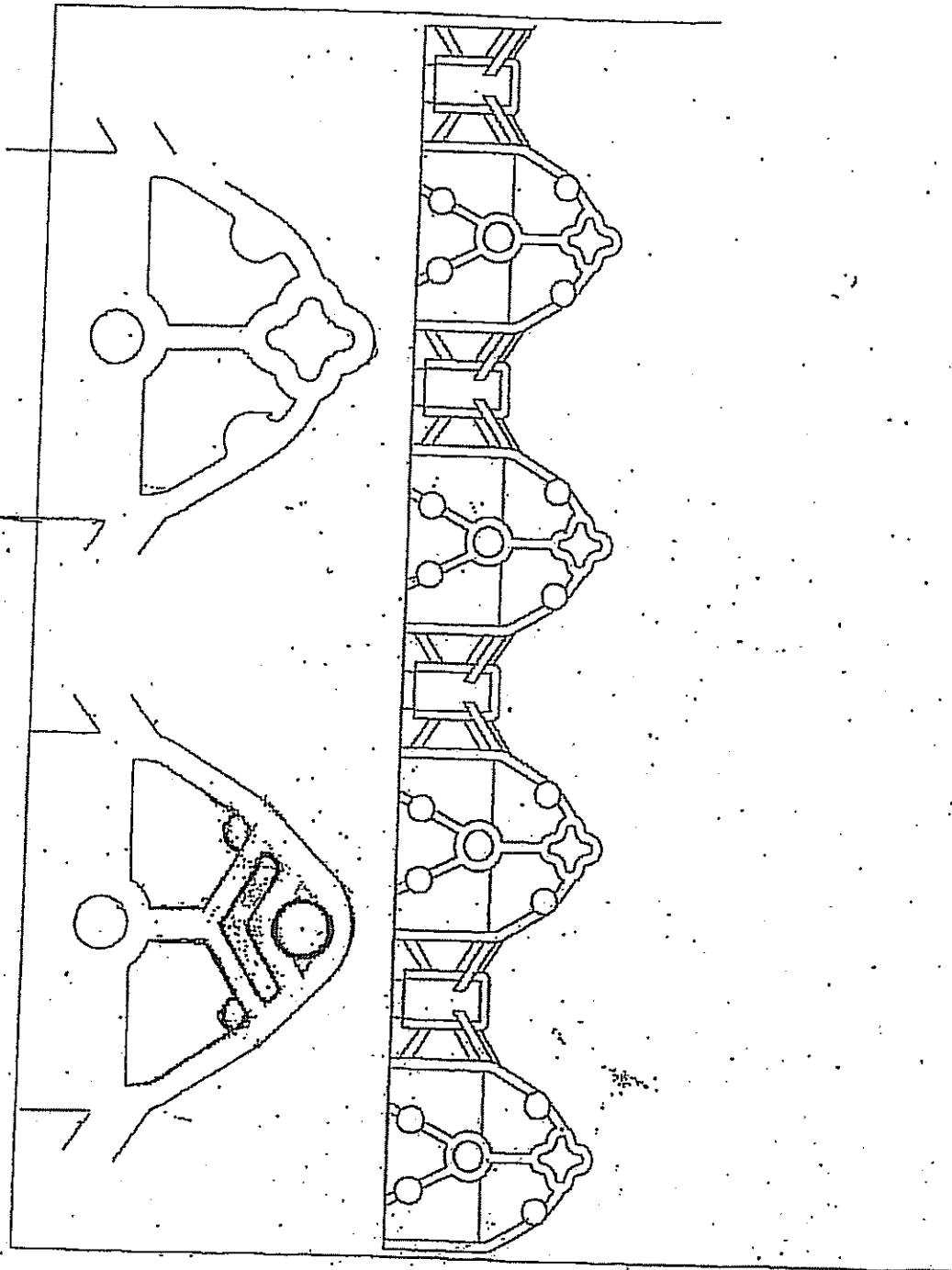
VVW001857



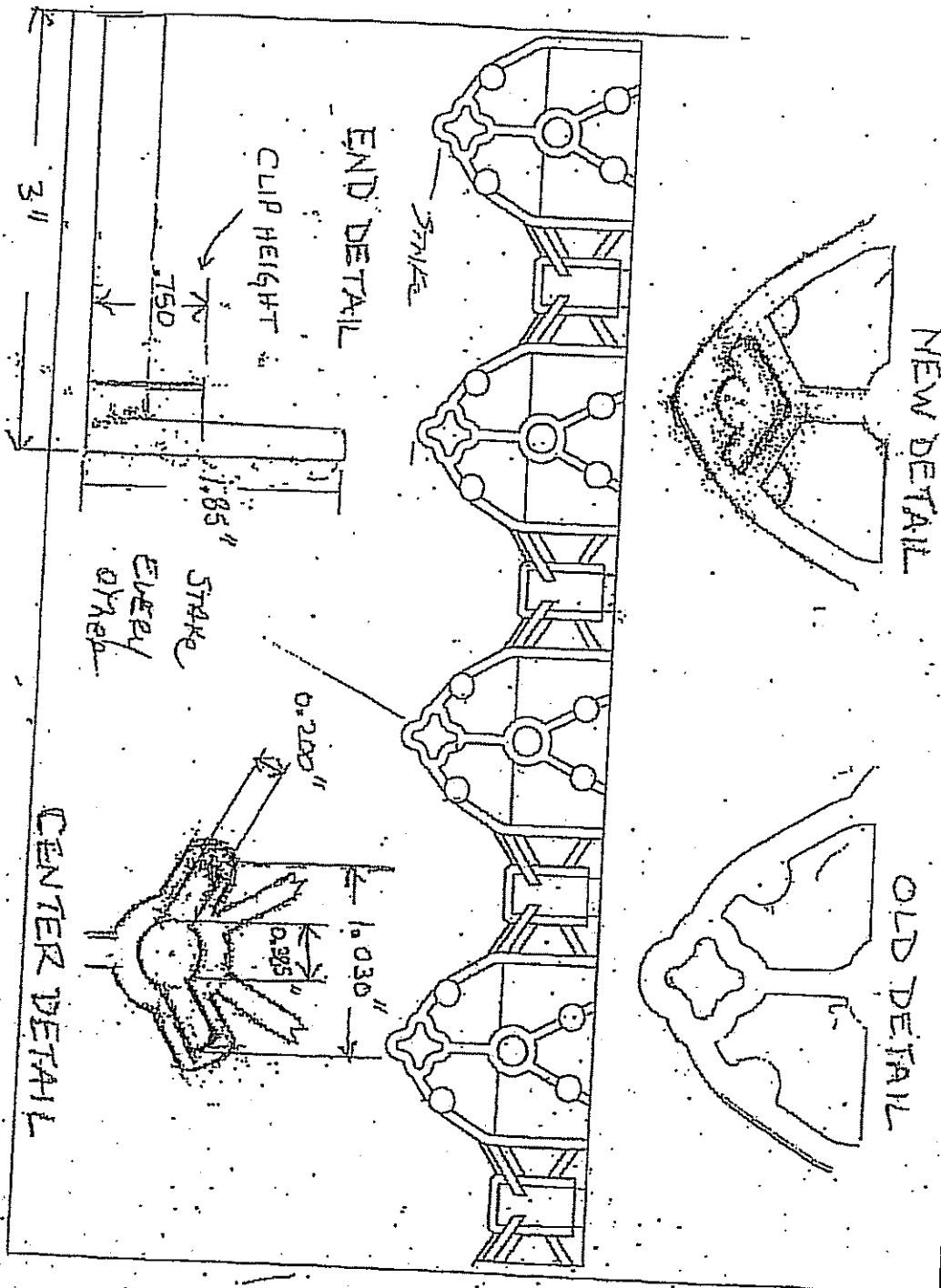
VVW001858



VVW001859



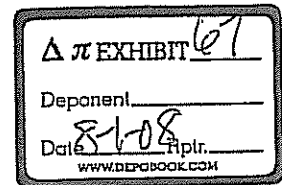
VVW001860



VVW001861

Exhibit F

REDACTED



Herb Cantu

From: Dominick V. Bertucci [dvinb@yahoo.com]
Sent: Friday, February 29, 2008 9:48 AM
To: Herb Cantu
Subject: Sample

Herb,
Please send one 3' sample of DPE to below.

wrote:

REDACTED

Subject: FW: Attn: Russ FW: jpeg of Diamond Paver Restraint
Date: Fri, 29 Feb 2008 09:35:26 -0600
From:
To: "Dominick V. Bertucci" <dvinb@yahoo.com>

Dominick,

Can you have a sample piece of the new Diamond Paver Edge restraint sent to:

Attn:

Oconomowoc, WI

Thanks

From:
Sent: Friday, February 29, 2008 9:28 AM
To:
Subject: Attn: FW: jpeg of Diamond Paver Restraint

REDACTED

Here's a picture of Valley View's new Diamond Paver Edge restraint. Their version to compete with the BEAST product. You can see from the picture, the cool feature they added was a slot for a regular landscape stake. So you can use spikes or stakes, whatever you prefer. Also means you can sell them spike or stakes. I'm going to have Valley View send you a piece to look at. These come packed 10 in a bundle, but really the best way to buy them is in a pallet that has 630 - 8' pieces, runs \$5.60 a strip. From what I'm being told by other customers, that's better than what they're paying for the competitor, and they like this product better because of the stake feature. Look for the sample sometime next week. I'll be in touch.

Thanks

Exhibit G

REDACTED

Exhibit H

CONFIDENTIAL - ATTORNEY'S EYES ONLY

1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

BRICKSTOP CORPORATION,)
Plaintiff,)
vs.) No. 08 CV 2690
VALLEY VIEW INDUSTRIES, H.C.,)
INC.,)
Defendant.)

THIS DEPOSITION CONTAINS CONFIDENTIAL MATERIAL.

The 30(b)(6) deposition of BRICKSTOP CORPORATION, by DAVID FRIEBERG, called for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before DINA G. VILLIS, a Certified Shorthand Reporter within and for the State of Illinois, CSR No. 84-3400 of said state, at Suite 1900, 203 North LaSalle Street, Chicago, Illinois, on the 30th day of July, A.D. 2008, at 9:36 a.m.

REDACTED

Exhibit I

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

BRICKSTOP CORPORATION,)	
)	
Plaintiff,)	
)	
-vs-)	No. 1:08-CV-02690
)	
VALLEY VIEW INDUSTRIES, H.C. INC.,)	Judge Gettleman
)	
Defendant.)	

The deposition of RUBIN KURTZ, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before CHRISTINE LIUBICICH, Certified Shorthand Reporter of the State of Illinois, at 203 , 19th Floor, Chicago, Illinois, on Tuesday, July 29, 2008, at 9:15 a.m.

1 stopped selling in the shrink wrap form?

2 A. I would assume three, four years ago.

3 Q. Three or four years ago, however, is this a
4 correct depiction of the label that was used with the
5 EdgeALL product?

6 A. It appears to be, yes.

7 Q. Did you use more than one spacer design with
8 the EdgeALL product?

9 A. What do you mean by spacer?

10 Q. The anchor side of a paver --

11 A. Uh-huh.

12 Q. -- at least with respect to the B.E.A.S.T.,
13 Son of B.E.A.S.T. and EdgeALL has foot and a spacer --

14 A. Uh-huh.

15 Q. -- did the design of the spacer change, or
16 did you use more than one type of spacer design with
17 the EdgeALL product?

18 A. I believe we did.

19 Q. Did you use more than two?

20 A. No.

21 Q. Can you describe the two types of spacer
22 designs that were use in the EdgeALL product?

23 A. One was a strap, and one was its current
24 little square with the Xs.

1 Q. And the little square with X spacer design is
2 the one that's depicted --

3 A. That's the printed one.

4 Q. -- depicted in the court papers that were
5 filed in connection with this action, correct?

6 A. That's correct.

7 Q. Now, with respect to the strap, that is just
8 a single bar that goes between the feet?

9 A. That's correct.

10 Q. And the strap was used for how long?

11 A. Three or four years.

12 Q. And the strap designed for spacer, was that
13 used also with the B.E.A.S.T. product?

14 A. Yes, it was.

15 Q. For the same period of time?

16 A. Yes, it was.

17 Q. Is it currently used with any sale of
18 B.E.A.S.T. product today?

19 A. No, it is not.

20 Q. Do you know if it is advertised today with
21 just the strap design spacer?

22 A. There maybe the odd guy that still has an old
23 picture that hasn't updated their site.

24 Q. Do you know if there is a odd guy that still

1 sells the strap product --

2 A. No.

3 Q. -- the strap spacer product?

4 A. No, there is not. That I know of.

5 Q. But the strap product, strap spacer design
6 with respect to the B.E.A.S.T., when was that changed
7 made?

8 A. I believe 2005.

9 Q. You had mentioned instructions earlier with
10 respect to the use of the paver edge products. The
11 instructions that are on page 1369, are those the
12 instructions you are referring to?

13 A. That's correct.

14 Q. Now, it's true, is it not, that neither the
15 Son of B.E.A.S.T. nor the EdgeALL products can be used
16 with a lattice nailing pattern, correct?

17 A. Excuse me.

18 Q. The Son of B.E.A.S.T. and the EdgeALL
19 product, neither of those will take a lattice nailing
20 pattern, will they?

21 A. Geeze, you've got me stumped. I'm not sure.
22 I would have to have a piece in front of me.

23 Q. I am not sure if your pictures are any better
24 than mine, but if you can look on page 1368, and this

1 A. Yes.

2 Q. SRR, I note, has a Tm besides it; have you
3 ever attempted to register the term SRR?

4 A. No.

5 Q. Have you ever considered SRR a trademark of
6 BrickStop?

7 A. No.

8 Q. And if you could draw a similar line with the
9 letter B to the part that shows, or that denotes,
10 "stable sure gripping footprint," SSF for stability?

11 A. A lot of little acronyms.

12 Q. I didn't invent them.

13 A. I know. I know.

14 It's the foot.

15 Q. The foot itself. So can you just draw like
16 a --

17 A. (Witness complies.)

18 Q. Fine, and we'll put a B on that.

19 What about the foot has stable sure
20 gripping -- is stable sure gripping?

21 A. What about the foot?

22 Q. Yes. What about the foot?

23 A. I would think it's just an advertising
24 statement.

REDACTED

1 could guess dissociated?

2 A. Sometimes it did go loosely in the box.

3 Q. If it happened to be loosely in the box, then
4 the product itself didn't necessarily have a
5 BrickStop --

6 A. It had no name on it.

7 Q. -- stamp on?

8 A. It had no name on it. I was a generic --

9 Q. So were you going to make something more
10 distinctive?

11 A. Exactly.

12 Q. This was an extruded product that you made?

13 A. Uh-huh.

14 Q. Was the extruded product as thick-walled as
15 the B.E.A.S.T., legs are?

16 A. Close.

17 Q. It was that thick?

18 A. Fairly close. When you -- are you talking
19 about thickness this way, thickness this way
20 (indicating?)

21 Q. I'm talking about thickness this way
22 (indicating.)

23 A. No.

24 Q. Because you can't make extruded product

REDACTED

Exhibit J

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BRICKSTOP CORPORATION,)	
)	
Plaintiff,)	
)	
-vs-)	No. 08-CV-02690
)	
VALLEY VIEW INDUSTRIES, H.C.,)	Judge Gettleman
INC.,)	
)	
Defendant.)	

The deposition of HOWARD RYNBERK, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before KRISTA R. DOLGNER, Certified Shorthand Reporter of the State of Illinois, at 2 North LaSalle Street, Suite 1808, Chicago, Illinois, on Thursday, July 31, 2008, at 9:30 a.m.

Reported for
LAKE SHORE REPORTING SERVICE, By:
Krista R. Dolgner, CSR, RPR
Illinois License No. 084-002878.

1 BY MR. BROWN:

2 Q. But do you understand that if you don't
3 understand what I am asking you, you can ask me to
4 clarify?

5 A. I do.

6 Q. Have you ever been involved with a lawsuit
7 prior to this dispute and the real estate matter
8 that you mentioned before?

9 A. You mean not in the real estate?

10 Q. Let me restate the question.

11 A. Yeah.

12 Q. Other than the real estate matter --

13 A. No.

14 Q. -- have you had any time prior to this
15 lawsuit when you have come to any understanding
16 about trademark law?

17 MS. THOMPSON: Objection, vague.

18 THE WITNESS: No.

19 BY MR. BROWN:

20 Q. Prior to this lawsuit, had you ever heard
21 of trade dress?

22 A. I have.

23 Q. In what context had you heard of trade
24 dress prior to this lawsuit?

1 MS. THOMPSON: And I'm going to impose an
2 objection only in so far as to instruct the witness
3 if it was in conversations with an attorney about
4 whom you were seeking advice, you would not discuss
5 your conversations with the attorney. If there was
6 some external event or something other than in
7 conversations with an attorney, you can speak.

8 THE WITNESS: It was only in conversations with
9 an attorney.

10 BY MR. BROWN:

11 Q. Can you tell me what the subject matter
12 was?

13 A. Yes. It related to a lawn edging. It did
14 not relate to this case.

15 Q. How long ago was that?

16 A. Oh, I think it's been maybe a year ago,
17 two years ago.

18 Q. And was another party making an allegation
19 about trade dress in a lawn edging?

20 A. They were asserting a trade dress.

21 Q. Who was that party?

22 A. Cobraco Manufacturing in Illinois.

23 Q. Is that Cobraco?

24 A. Yes.

1 Q. What was the name of the lawn edging
2 involved, Cobraco's lawn edging?

3 A. I don't recall.

4 Q. And what specifically did they allege
5 about -- I assume this was an activity of Valley
6 View Industries that they were complaining about?

7 A. No, it wasn't.

8 Q. What were they complaining about?

9 A. They weren't complaining to me. They had
10 alleged that years ago that their design was a trade
11 dress.

12 Q. And why were they raising that with you?

13 A. They didn't raise it with me.

14 Q. How did it come about that you learned
15 about their allegations about trade dress?

16 A. Because another manufacturer was making
17 their similar lawn edging.

18 Q. Was the claim that Cobraco was making, did
19 it relate to the product configuration of the lawn
20 edging?

21 A. It did.

22 Q. So explain to me how this Cobraco
23 allegation came to your attention.

24 A. Originally it came back to my attention,

1 probably their patent ran out, and, again, you are
2 going to ask me years, and I don't recall the years;
3 so I'm going to estimate their patent might have run
4 out in 2002.

5 Q. So Cobraco had a patent on a lawn edging
6 that expired?

7 A. Uh-huh, that's correct.

8 Q. And then how did you learn that they were
9 making allegations about trade dress in the lawn
10 edging?

11 A. Because another manufacturer was making
12 that lawn edging after their patent expired.

13 Q. I see. And who was it they were
14 complaining about?

15 A. Master Mark.

16 Q. And what were the circumstances that you
17 learned about Cobraco's allegations against Master
18 Mark?

19 A. Just hearsay in the marketplace.

20 Q. I see. So you learned that Cobraco -- had
21 they brought a lawsuit?

22 A. No.

23 Q. Master Mark had come out with a new
24 product?

REDACTED

1 landscape?

2 A. It is.

3 Q. So those terms are used somewhat
4 interchangeably?

5 A. It is, yes.

6 Q. What are the functional requirements of a
7 paver restraint?

8 A. Well, I think the functional requirement
9 would be to hold the edging in place.

10 Q. So the overall function is to hold the
11 pavers in place?

12 A. Yes.

13 Q. And to do that you need to be able to hold
14 the edging in place?

15 A. Yes.

16 Q. What is needed to achieve that function of
17 holding the edging in place?

18 MS. THOMPSON: And I object only to the extent
19 it calls for any legal conclusions. You can go
20 ahead.

21 THE WITNESS: Well, you would have to have a
22 sidewall to hold the paver, and you would have to
23 have a footing of some sort to hold the restraint in
24 place.

1 BY MR. BROWN:

2 Q. Can you think of anything else you would
3 need to have in a paver edging restraint?

4 A. Yeah. You would have to have something to
5 put the -- to hold the restraint in the ground,
6 whether it be a stake, a nail, or any other type of
7 device.

8 Q. Anything else?

9 A. No.

10 Q. So somewhere in the paver restraint you
11 would need to have a hole in order to put the stake
12 or nail in?

13 A. That's correct.

14 Q. Can you ever stake or nail through the
15 paver restraint without the hole?

16 A. I have not seen it done.

17 Q. So to have a functional paver restraint
18 all you need is a sidewall, a foot of some sort, and
19 a hole in the foot to receive the nail?

20 MS. THOMPSON: Same objection.

21 THE WITNESS: Yes.

22 BY MR. BROWN:

23 Q. Does the foot have to be any particular
24 shape in order to achieve its function?

1 MS. THOMPSON: Can I just impose a continuing
2 objection for as long as you use the word function?
3 To the extent it has any legal significance, I
4 object to it, but he can answer.

5 THE WITNESS: No, there are a number of
6 different foots you may have.

7 BY MR. BROWN:

8 Q. And when you say number of different
9 foots, you mean?

10 A. Foot designs.

11 Q. The shape of the foot could be different?

12 A. Yes.

13 Q. Are there any fundamental requirements for
14 the shape of the foot in order for it to function
15 that you would say is common to all of the feet you
16 have seen?

17 MS. THOMPSON: Objection to the form of the
18 question.

19 THE WITNESS: I wouldn't say there is a
20 commonality. The majority are L. shaped or T.
21 shaped.

22 BY MR. BROWN:

23 Q. And when you say L. shaped, what do you
24 mean?

1 A. Sidewall and a foot.

2 Q. So the sidewall and the foot form an L.?

3 A. Yes.

4 Q. And in some cases the sidewall is
5 connected to a foot running in either direction?

6 A. Correct.

7 Q. And is that what you are calling a T.?

8 A. Yes.

9 Q. And are you aware of any common
10 requirement for the shape of the foot itself?

11 A. I'm not aware of any common requirement.

12 Q. Who was involved in the decision to
13 develop the Diamond Paver Edge?

14 A. Myself, Frank Soukup, Dominick Bertucci.

15 Q. And can you tell me what role each of you
16 played in that decision?

17 A. Frank was more the technical advisor. He
18 dealt with the company that actually did the
19 manufacturing. And Dominick and I were more on an
20 advisory level of what we wanted to see in the
21 product.

22 Q. Do you know whether Mr. Soukup has any
23 experience in injection molding?

24 A. I can't answer that. I don't know.

REDACTED

1 asterisk.

2 A. From the top? Yes.

3 Q. Do you know what Mr. Bertucci was talking
4 about here?

5 A. Probably the Diamond Paver Edge.

6 Q. And so is it your understanding that
7 Unilock was asking if Valley View could duplicate
8 the B.E.A.S.T. product?

9 A. Correct. But if we go back, you had asked
10 me before if there was a customer that asked, and
11 Unilock was not a customer at that time.

12 Q. I understand. So there was a potential
13 customer that asked?

14 A. Right.

15 Q. And was this the beginning of the idea to
16 follow the B.E.A.S.T. product when you developed the
17 Diamond Paver Edge?

18 A. No, I think it actually came before this
19 in June.

20 Q. Which came in June?

21 A. Our idea of having another edging to
22 complement our Diamond Lock.

23 Q. So in June you had the idea to make an
24 injection-molded edging?

REDACTED

1 development of the Diamond Paver Edge in November of
2 2007?

3 A. Very close to having the drawings done.

4 Q. How long was it -- once you started with
5 the B.E.A.S.T. design for your -- the configuration
6 of the feet for the Diamond Paver Edge, do you know
7 how many different versions there were of that
8 configuration before you arrived at the final
9 configuration?

10 A. No.

11 Q. When did you tell your independent reps
12 that you were going to come out with a Diamond Paver
13 Edge?

14 A. I would estimate we probably told them in
15 late December. Possibly in November.

16 Q. And are your independent reps obligated to
17 only sell Valley View paver edging?

18 A. Yes.

19 Q. And are they obligated to only sell Valley
20 View lawn edging as well?

21 A. Yes.

22 Q. They can't sell competitive products with
23 yours?

24 A. They can sell other products that are not

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Lake Shore Reporting 312-782-9833 (312) 782-9833

1 drawing.

2 THE WITNESS: It appears to.

3 MS. THOMPSON: Are you talking about this here?

4 MR. BROWN: Yes.

5 Q. And then do you see to the right of that
6 the configuration that says, "Old Detail"?

7 A. Correct.

8 Q. Does that look like the B.E.A.S.T. product
9 from --

10 A. Well, I don't have the B.E.A.S.T. product
11 in front of me.

12 Q. So without the B.E.A.S.T. product in front
13 of you, you don't know?

14 A. I don't know.

15 Q. Directly below at the bottom of that
16 drawing there's configuration that's labeled "Center
17 Detail." Do you see that?

18 A. I do.

19 Q. Do you ever recall there being a thought
20 to put the chevron-shaped stake hole in over the
21 center hole of the Diamond Paver edge?

22 A. No, I don't recall that.

23 MR. BROWN: Let's mark as Exhibit 30 a two-page
24 document with Production Numbers VWV 1272 to 73.

REDACTED

1 Q. Do you recall discussing how many pieces
2 of Diamond Paver Edge would be shipped on a single
3 pallet?

4 A. Yes.

5 Q. And what did you discuss about that?

6 A. As it says here, we tried to get a
7 thousand per skid.

8 Q. Did you end up with a thousand per skid?

9 A. No.

10 Q. Why not?

11 A. The weight was too heavy for a pallet, for
12 a single pallet.

13 Q. Do you see there is an e-mail at the
14 bottom that is from Mr. Bertucci to Mr. Soukup?

15 A. Yes.

16 Q. And he says, "Frank, it is clear with my
17 visits to the competitor of our new paver restraint
18 that we are going to have to ship on eight-foot
19 pallets. Currently the customer base for our
20 competition is getting 600 eight-foot lengths
21 bundled on a pallet. They are not wanting to
22 deviate from that." Do you see that?

23 A. Yes.

24 Q. Was it then the customers who were giving

REDACTED

1 with relation to its Diamond Paver Edge and
2 BrickStop Corporation?

3 A. No.

4 MS. THOMPSON: Objection to the form of the
5 question.

6 BY MR. BROWN:

7 Q. To your knowledge has any customer or
8 potential customer attempted to order B.E.A.S.T.
9 products from Valley View?

10 A. No.

11 Q. Are you aware of any communications from
12 customers that in any way relate to BrickStop?

13 MS. THOMPSON: Objection, form of the question.

14 THE WITNESS: I guess I don't -- if you want to
15 rephrase that question. Have we received
16 communication from customers?

17 BY MR. BROWN:

18 Q. Where BrickStop was in any way the
19 subject?

20 A. I think you have seen some e-mails from
21 Dominick as to pricing.

22 Q. Other than the pricing e-mails that we
23 have looked at today?

24 A. No.

1 Q. Have you ever heard of a product called
2 Edge All?

3 A. No.

4 Q. Have you ever heard of a product called
5 Son of the B.E.A.S.T.?

6 A. I have heard of it.

7 Q. What do you know about the Son of the
8 B.E.A.S.T.?

9 A. I have not seen it.

10 Q. Do you consider the Son of the B.E.A.S.T.
11 to be a competitor with the Diamond Paver Edge?

12 MS. THOMPSON: Objection, calls for
13 speculation.

14 THE WITNESS: That I don't know.

15 BY MR. BROWN:

16 Q. If Valley View -- is it your opinion
17 that -- when Valley View began developing the
18 Diamond Paver Edge, do you believe it would have
19 arrived at the shape of the product that it did if
20 it had not had reference to the BrickStop
21 B.E.A.S.T.?

22 A. I honestly can't answer that.

23 Q. Why not?

24 A. Because we might have chose a different --

REDACTED

1 testing for its product?

2 A. No.

3 Q. Has Valley View ever employed any focus
4 groups or surveys with respect to the Diamond Paver
5 Edge?

6 A. Not that I'm aware it.

7 Q. Has Valley View ever done any surveying
8 with respect to the BrickStop B.E.A.S.T.?

9 A. No.

10 Q. Did you ever have a conversation with
11 Mr. Bertucci in which he related to you that someone
12 from BrickStop had approached him at a trade show?

13 A. Yes.

14 Q. What do you recall about that
15 conversation?

16 A. He said he felt threatened at the trade
17 show, said that he thought it was the closest he
18 ever got into a fistfight with somebody at a trade
19 show and that the person was very angry and
20 threatened to sue Valley View.

21 Q. Do you recall any more about what
22 Mr. Bertucci told you?

23 A. No.

24 Q. He said he had thought it almost came to a

1 fistfight?

2 A. Yes.

3 Q. Did he recount any of the words that were
4 used?

5 A. He didn't recount any words to me outside
6 of he asked the gentleman to please leave.

7 Q. Do you recall when that happened?

8 A. That was at, if I'm correct, the Tennessee
9 hardscape show.

10 Q. Do you recall whether that incident
11 happened before or after you received the letter
12 with BrickStop's complaints?

13 A. I'm pretty sure it happened before.

14 Q. And as you sit here today you can't
15 remember any other details that Mr. Bertucci told
16 you?

17 A. No.

18 Q. Did you ever in the process of developing
19 the Diamond Paver Edge, did you ever ask your
20 lawyers to give you any opinions about whether you
21 could imitate the B.E.A.S.T.?

22 MS. THOMPSON: Objection. Calls for
23 attorney/client communications. I believe the only
24 waiver we have made is with respect to the patent

1 search. If you are asking for something other than
2 a patent search, I believe that it would be
3 attorney/client.

4 I would instruct you not to answer that
5 one.

6 THE WITNESS: I figured that.

7 BY MR. BROWN:

8 Q. Did you ask your lawyers to do a patent
9 search?

10 A. Yes.

11 Q. Did you ask them to do any other kind of
12 search beyond a patent search?

13 THE WITNESS: Am I answering that?

14 MS. THOMPSON: In terms of -- to the extent you
15 can relate it to the point in time with respect to
16 the patent search, we have to waive the full
17 disclosure at that time. I'm talking about anything
18 that starts with the letter on. That's what we are
19 not talking about. Does that make sense to you?

20 THE WITNESS: No.

21 MS. THOMPSON: Then with respect to the date
22 and time around the period of time where you asked
23 about the patent search, do you remember when that
24 was?

1 THE WITNESS: Yes.

2 MS. THOMPSON: Did you ask for any searches
3 other than a patent search at that point in time is
4 what he is asking.

5 THE WITNESS: No.

6 MS. THOMPSON: Did that recharacterize your
7 question or thereabouts?

8 MR. BROWN: Right. We will keep poking around.

9 Q. Did you ask -- during the time frame when
10 you asked for the patent search when you were
11 developing the Diamond Paver Edge, did you ask your
12 lawyers whether you needed to be concerned about
13 anything other than patents?

14 A. I honestly don't recall.

15 Q. Do you recall what your lawyer said about
16 the patent search?

17 A. There were no patents, current patents.

18 Q. Did you ask your lawyers at that time
19 about trade dress issues? At that time.

20 A. I don't recall.

21 Q. Did you ask your lawyers at that time
22 about trademark issues?

23 A. Again, I don't recall.

24 MR. BROWN: Let's mark as Exhibit 44 a one-page

1 document with Production Number VVW 2075. And let's
2 mark as Exhibit 45 a document with Production
3 Numbers VVW 2076 through 2095.

4 (Rynberk Exhibits 44 and 45
5 marked.)

6 BY MR. BROWN:

7 Q. Do you recognize the e-mail that's marked
8 as Exhibit 44?

9 A. I do.

10 Q. The e-mail that's Exhibit 44 is from James
11 Ryther. Who is that?

12 A. An attorney with DLA Piper.

13 Q. And it's dated July 27th, 2007; is that
14 right?

15 A. Yes.

16 Q. That was around the time that you were
17 developing the Diamond Paver Edge?

18 A. Probably before.

19 Q. Before. Why did you ask Mr. Ryther to do
20 a search about BrickStop?

21 A. I actually had him do a search on other
22 paver edgers too.

23 Q. Did Mr. Ryther present you with an e-mail
24 about the other paver edgers?

1 A. He did.

2 Q. Did you give that e-mail to your counsel?

3 A. They pulled everything from our e-mail, so
4 it should be.

5 MR. BROWN: Counsel, I think we are entitled to
6 see any e-mails from Mr. Ryther.

7 MS. THOMPSON: We don't have any others. I'm
8 not saying there weren't at some point in time, but
9 we have searched, and I don't have any others -- or
10 none of the others we were able to retrieve from
11 there. I will check our records.

12 MR. BROWN: Will you check the records of DLA
13 Piper?

14 MS. THOMPSON: That's what I said. I will
15 check our records. But I'm not sure that there are
16 any others. Mr. Ryther retired from the firm.

17 BY MR. BROWN:

18 Q. Do you recall how many e-mails you got
19 from Mr. Ryther?

20 A. Oh, I don't recall how many.

21 Q. Was it more than two?

22 A. Yes.

23 Q. And these e-mail related to your
24 development of the Diamond Paver Edge?

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1 A. No. Some e-mails related to other
2 matters.

3 Q. How about with respect to the e-mail
4 relating to the Diamond Paver Edge? How many
5 e-mails did you get?

6 A. At least two.

7 Q. And was each one regarding patent
8 coverage?

9 A. To the best of my knowledge.

10 Q. You see that we've marked as Exhibit 45
11 Patent Number 5212917?

12 A. I do.

13 Q. Did that come with the information from
14 Mr. Ryther?

15 A. It came at an earlier time.

16 Q. So he had provided you with this patent
17 before this e-mail?

18 A. Yes.

19 Q. Did you look at the Kurtz patent, U.S.
20 Patent 5212917, when Mr. Ryther gave it to you?

21 A. I probably glanced at it.

22 Q. Did you look at the figures to see the
23 paver edge?

24 A. I didn't review it in detail.

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1 Q. Whether or not you reviewed it in detail,
2 did you look at the figures that show this
3 particular paver edge?

4 A. No, I didn't.

5 Q. You didn't look at it at all?

6 A. No.

7 Q. Do you see the paver edge that's depicted
8 on the cover of Exhibit 45?

9 A. I do.

10 Q. Does that look to you to be the B.E.A.S.T.
11 paver edge?

12 A. No.

13 Q. Do you see the second sentence of
14 Mr. Ryther's e-mail? He says, "I am assuming that
15 this illustrates the paver restraint edging referred
16 to in your request for the search." Do you see
17 that?

18 A. I do.

19 Q. Did you ever tell Mr. Ryther that in fact
20 did not illustrate the paver restraint edging
21 referred to in your search?

22 A. On this diagram, I don't think so.

23 Q. Did you and Mr. Ryther ever discuss trade
24 dress issues with respect to the B.E.A.S.T. while

1 you were developing the Diamond Paver Edge?

2 A. That I can't recall.

3 Q. Did you and Mr. Ryther discuss trade dress
4 issues with respect to the B.E.A.S.T. at any time?

5 MS. THOMPSON: Objection. Calls for
6 attorney/client privilege after the litigation or
7 after the receipt of a cease and desist letter. I
8 would instruct you not to answer that.

9 THE WITNESS: Okay.

10 MR. BROWN: I will just state for the record
11 that I'm not sure you can make a temporal cutoff
12 like that.

13 MS. THOMPSON: I think we can, counsel. I did
14 look at this before we made the production.

15 MR. BROWN: Would you be kind enough to cite
16 some case law to me on that?

17 MS. THOMPSON: No, I don't have anything here
18 with me.

19 MR. BROWN: I don't expect you to pull it off
20 the top of your head.

21 MS. THOMPSON: All right. But it won't be
22 until I finish my brief.

23 BY MR. BROWN:

24 Q. So just so I can lay the record, have you

1 ever sought advice from a lawyer respecting trade
2 dress rights of BrickStop in its B.E.A.S.T. product
3 configuration?

4 MS. THOMPSON: That's a yes/no question.

5 THE WITNESS: I really don't know the answer to
6 the question.

7 BY MR. BROWN:

8 Q. Have your lawyers ever advised you about
9 BrickStop's claims that there are trade -- there was
10 trade dress infringement because of the sales of the
11 Diamond Paver Edge?

12 MS. THOMPSON: That's only a yes/no question.

13 THE WITNESS: Yes.

14 MR. BROWN: And what advice were you given?

15 MS. THOMPSON: That's attorney/client
16 privilege.

17 MR. BROWN: And you are instructing him not to
18 answer?

19 MS. THOMPSON: I am instructing him not to
20 answer. With the exception of since we revealed
21 this letter, if the advice you got came
22 contemporaneous with that period of time, you have
23 to reveal whatever was discussed that you recall. I
24 was presuming it was subsequent.

1 BY MR. BROWN:

2 Q. The e-mail says, "You will note that there
3 is no record that B.E.A.S.T. was registered, but it
4 would still be wise to avoid using any similar name
5 if you decide to adopt this product." Do you see
6 that?

7 A. Yes.

8 Q. Did you understand that to be trademark
9 advice from Mr. Ryther?

10 A. It would seem to be.

11 MR. BROWN: And just so I understand the scope
12 of your instructions, counsel, the temporal cutoff
13 you are asserting begins the date that he received
14 the cease and desist letter?

15 MS. THOMPSON: Correct.

16 MR. BROWN: And you will -- so we don't have to
17 go through the exercise, you will instruct him not
18 to answer about any advice given after that date?

19 MS. THOMPSON: Correct. If that's after the
20 product has been developed and that's after a period
21 of time they would have sought any right to use
22 opinions, correct.

23 MR. BROWN: If you would give me just a few
24 minutes, we might be done.

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1 (Off-the-record discussion.)

2 MS. THOMPSON: Can we go on the record one
3 second?

4 MR. BROWN: Sure.

5 MS. THOMPSON: You asked about other opinions
6 with respect to other patents that were researched
7 at the time of the creation of Diamond Paver Edge,
8 but your requests that we responded to don't make
9 such a broad -- I mean they simply ask that mention
10 or relate to any opinion of counsel indicating
11 whether Valley View's Diamond Paver Edge infringes
12 the BrickStop design. We fully complied as to what
13 you asked for. As far as looking for others, I
14 don't think I have any problem doing that if they
15 all relate to the same period of time of development
16 or pre-confrontation, shall we say, period. I just
17 want to make clear on the record we fully complied.
18 We didn't hold back anything knowingly that was
19 requested.

20 MR. BROWN: Okay. I appreciate that. But you
21 are willing to do that without another request?

22 MS. THOMPSON: As long as I get my brief filed
23 in a timely manner, you know, and then I have a week
24 of vacation, but as soon as I get everything cleared

1 up, that will be one of the things I will do for
2 you, yes. I may even have somebody to do that while
3 I am gone.

4 MR. BROWN: I assume there would be somebody at
5 DLA Piper that could do that.

6 MS. THOMPSON: You know, if there were more
7 people, I wouldn't be so frazzled right now. Are
8 you going to finish looking at that? If you are,
9 I'm going to take a break.

10 (Recess taken.)

11 BY MR. BROWN:

12 Q. Is it your understanding that the
13 injection molding process allows you to be more
14 creative in the shapes that are employed in a
15 product as compared to the extrusion process?

16 MS. THOMPSON: Objection. Form of the
17 question. Also lack of foundation. You can answer.

18 THE WITNESS: Generally that's true.

19 MR. BROWN: Okay. I think I have nothing
20 further.

21 MS. THOMPSON: Okay. I have some questions
22 that we have to go through.
23
24

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Exhibit K

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BRICKSTOP CORPORATION,)
)
 Plaintiff,)
)
 vs.) 1:08-CV-02690
)
VALLEY VIEW INDUSTRIES, H.C.,)
INC.,)
)
 Defendant.)

The deposition of DOMINICK V. BERTUCCI,
called by the Plaintiff for examination, pursuant to
notice and pursuant to the Rules of Civil Procedure
for the United States District Courts pertaining to
the taking of depositions, taken before Patricia S.
Mann, CSR, RPR, License No. 084-001853, a notary
public in and for the County of Cook and State of
Illinois, at Suite 1808, Two North LaSalle Street,
Chicago, Illinois, on Friday, August 1, 2008, at
9:40 o'clock a.m.

Reported for
LAKE SHORE REPORTING SERVICE, by:
Patricia S. Mann, CSR, RPR.
License No. 084-001853

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1 would have been the only other time.

2 Q. Did you send your sales sheet to any
3 potential customers?

4 A. I don't recollect.

5 Q. At the trade show in Nashville, did you
6 hand out any hard copies of the sales sheet?

7 A. Yes.

8 Q. Do you know how many?

9 A. Maybe 75 to 100.

10 Q. And that was to potential customers?

11 A. Yes.

12 Q. So other than the PDF that you sent to
13 your independent reps and the hard copies you
14 handed out at the two trade shows that you've
15 mentioned, do you recall sending in any form the
16 original sales sheet to any customer or potential
17 customer?

18 A. I don't recall.

19 Q. Did you do anything to retrieve any of
20 the sales sheets after BrickStop complained?

21 A. The sales sheets that were in hand we
22 just destroyed.

23 Q. Anything else?

24 A. As I stated, I had made it clear to the

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1 reps to stop promoting that particular sales sheet.

2 Q. Did you do anything to follow-up to see
3 if your independent reps actually stopped using that
4 sheet?

5 A. I had made telephone calls and making sure
6 that they were clear that they weren't supposed to
7 be promoting that sheet.

8 Q. In your understanding, what is required
9 of a paver edging in order for it to function for
10 its intended purpose?

11 MS. THOMPSON: Objection, vague, objection to
12 the extent it calls for a legal conclusion and
13 possibly foundation. You can answer.

14 THE WITNESS: A. Keeping the pavers in place.

15 MR. BROWN: Q. So that's the ultimate
16 function, to keep the pavers in place, right?

17 A. Have a sturdy enough product that allows
18 for the use of the product to be functional in the
19 eyes of the user.

20 Q. Are there any particular structural
21 features that are common to all paver edges?

22 A. They all have sidewalls and they all have
23 anchor bases.

24 Q. Anything else?

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1 A. No.

2 Q. And when you say sidewalls, that's the
3 portion that is actually abutted against the
4 pavers?

5 A. In one respect, it can be an inside,
6 depending on the design of the product, or an
7 outside, but in one way, shape or form, the sidewall
8 is touching one part of the pavers.

9 Q. When you say an inside or an outside, I'm
10 not too clear on what you mean by that.

11 A. Some paver restraints are manufactured to
12 where you can reverse them.

13 Q. So some of them you could use either side
14 of the sidewall to abut the pavers?

15 A. Correct.

16 Q. Okay. And when you say "anchor bases,"
17 what do you mean?

18 A. The spot where an anchor product is used
19 to adhere the product to the ground.

20 Q. And that anchor being either a nail or a
21 stake?

22 A. Yes.

23 Q. Are there any other types of anchors that
24 you've heard of being used?

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1 A. Not that I'm aware of.

2 Q. Are you aware of any functional
3 requirements for the shape of the anchor base to
4 perform its function?

5 MS. THOMPSON: Calls for speculation -- it's
6 not that, let me get it right. Object to the extent
7 it calls for a legal conclusion and because the
8 question is vague and I forgot what the last one was
9 -- I'll just leave it, calls for speculation. Go
10 ahead, you can answer.

11 THE WITNESS: Can you restate the question?

12 MS. THOMPSON: I'm sorry, I forgot it, too.

13 MR. BROWN: Could you read it back, please?

14 (The requested portion of the record
15 was read.)

16 MS. THOMPSON: Lack of foundation, that was my
17 last one, foundation.

18 THE WITNESS: Can you repeat that again,
19 please?

20 (The requested portion of the record
21 was read.)

22 THE WITNESS: A. With respect to any type of
23 paver restraint or the paver restraint in question?

24 MR. BROWN: Q. With respect to any type of

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1 paver restraint.

2 A. Yes.

3 Q. Okay.

4 A. It just has to have a spot that works
5 with -- in the view of Valley View with our anchor
6 stake to work with the product.

7 Q. So it has to have a spot to receive either
8 the nail or the stake?

9 A. Yes.

10 Q. Are there any other requirements that
11 you're aware of for the anchor base?

12 MS. THOMPSON: Same set of objections.

13 THE WITNESS: A. It has to be functional
14 enough to keep the sidewall sturdy enough to act as
15 its -- as the products wants to as a restraint.

16 MR. BROWN: Q. Are there any other functional
17 requirements for the anchor base that you're aware
18 of?

19 MS. THOMPSON: Same objections.

20 THE WITNESS: A. No.

21 MR. BROWN: Q. Why did Valley View decide to
22 imitate the Beast product?

23 MS. THOMPSON: Form of question. Go ahead --
24 and lack of foundation. Go ahead.

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1 THE WITNESS: A. It had been brought up with a
2 potential customer of Valley View back in July of
3 last year.

4 MR. BROWN: Q. Can you tell me what the
5 circumstances of that meeting were with the
6 potential customer?

7 A. They had made mention and made -- made
8 mention of the name the Beast by name and had
9 mentioned the fact that it was affecting their
10 market share for the product they were currently
11 selling and they looked at Valley View to possibly
12 be a partner with them, having them distribute the
13 product for them.

14 Q. Were you at that meeting?

15 A. Yes.

16 Q. And who was that meeting with?

17 A. That was with Unilock.

18 Q. When did that meeting occur?

19 A. July of last year.

20 Q. July of 2007?

21 A. Yes.

22 Q. Where did that meeting occur?

23 A. That took place at the Aurora location of
24 Unilock.

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1 Dave Martinet was a part of that meeting, also.

2 Q. Who is Dave Martinet?

3 A. He's an employee of Tamelings who is a
4 Unilock distributor.

5 Q. Who is Howie Rynberk?

6 A. He would be Howard Rynberk's son.

7 Q. Was Howie Rynberk at the Unilock meeting?

8 A. I don't recall. He was in the building at
9 that time, but I don't recall if he was in a meeting
10 at that time.

11 Q. And you'll see about five -- you see the
12 asterisk on the left-hand side?

13 A. Uh-huh.

14 Q. And these are your notes from the
15 meeting?

16 A. Uh-huh.

17 Q. Did you take any written notes while you
18 were at that meeting?

19 A. Yes, I did.

20 Q. And what did you do with those?

21 A. I transcribed them into this e-mail.

22 Q. And what did you actually do with the
23 written piece of paper?

24 A. I had discarded it once I put it on

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1 that the Beast is being sold by a potential
2 customer --

3 A. Yes.

4 Q. -- you focus on the fact that stakes can
5 be used with the Diamond Paver Edge?

6 A. Correct.

7 Q. Is there any other functional aspect of
8 the Diamond Paver Edge that you try and tout when
9 you know you're in competition with the Beast?

10 A. Yes. We have a connecting point that is
11 more of a vertical height than the Beast product
12 that makes it easier for the installer to do that
13 connecting point and have two pieces together and at
14 the same time, if there is any ground heave or
15 movement, the locking system will help prevent any
16 separation of the two products together.

17 Q. Anything else?

18 A. Our sidewall is a bit taller and that
19 adds a little bit more of functionality, strength on
20 the sidewall. At the same time, it's hidden and
21 buried when the job is completed, but to the peace
22 of mind to the end user, we've added a little bit
23 of height to the product to, you know, maybe relieve
24 some concerns on the pliability of the product and

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1 the drawing?

2 A. He did not.

3 Q. Did anyone ever ask you for any feedback
4 on the configuration of the product?

5 A. The comments that I was receiving was the
6 fact that we were going to add the anchor stake to
7 the product to make it more functional with the
8 customer base out there that we were currently
9 selling, and I flat out said that was a great idea,
10 because we have a -- we were going to market this,
11 of course, to our current pool of customer base and
12 go after customers who are not selling, but to have
13 something developed where they could use two parts
14 interchangeably versus just having one, I thought
15 that was a really big feather in our cap.

16 Q. Did you give any other feedback on the
17 shape of the product?

18 A. No, not that I can recall. Just the fact
19 that I just wanted to make sure that it was what
20 they were thinking of developing as a much higher
21 quality product along those comments.

22 Q. Meaning much higher quality than the
23 Diamond Lok that you were presently selling?

24 A. Correct.

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1 Q. Let's just briefly look at Exhibit 30, if
2 we can. This is out of order. And I'll ask you if
3 you've seen that one before?

4 A. This is --

5 MS. THOMPSON: You have to take a look, is it
6 more than one page?

7 THE WITNESS: A. I don't recall, because these
8 are all looking the same to me. So this looks like
9 our product here and it looks like the Beast
10 product. All I can recall is seeing our style
11 product being developed on something like this,
12 but this exact piece, I cannot recall this exact
13 piece.

14 MR. BROWN: Q. You remember seeing
15 side-by-side drawings before, but that might not be
16 the one you've seen?

17 A. Correct.

18 Q. Okay. Did you ever get any feedback from
19 customers that they did not want to deviate from
20 the palleting arrangement that they were presently
21 getting from BrickStop for sales of the Beast?

22 A. That was never brought up as an issue
23 with me.

24 Q. I'd like to show you what we previously

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1 Q. Can distributors go to, for instance, the
2 Irrigation Show?

3 A. Yes.

4 Q. Can resellers go to those shows?

5 A. Yes.

6 Q. Can contractors go to those shows?

7 A. Yes.

8 Q. Can all of those same types of people go
9 to distributor writing shows?

10 A. No, the distributor writing shows are
11 normally market segmented, someone that lives in
12 Pennsylvania wouldn't go to a distributor show in
13 Illinois. It depends on the market that the
14 distributor services, he therefore invites his
15 dealer base and then it's up to them, of course,
16 if they want to come to see the show.

17 Q. So at a distributor show, you get the
18 distributor and his customers will arrive there?

19 A. Correct, I have -- yes.

20 Q. And can contractors and installers go to
21 those shows?

22 A. Yes.

23 Q. And when you're at these shows, do you
24 have contact with both distributors and end users

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1 like contractors and installers?

2 A. Well, I wouldn't have contact with the
3 distributors because I'm at a sole distributor show,
4 so I'm there for his benefit, not promoting another
5 distributor that he might be a competitor of theirs.
6 So when he has his viewer base or his contractor
7 base there, I'm there promoting the product to the
8 landscaper on behalf of the distributor.

9 Q. So you would -- you would run into or you
10 would have contact with both dealers and end users
11 at a distributor show?

12 A. That is correct.

13 Q. Have you in any of these shows had a
14 contractor or installer tell you he thought that
15 your product looked like the Beast, the Diamond
16 Paver Edge?

17 A. Yes.

18 Q. When did that happen?

19 A. When we were at the E.P. Henry show and
20 the ICPI show.

21 Q. At the E.P. Henry show, how many
22 contractors or installers made that comment?

23 A. I would say maybe a half a dozen.

24 Q. How about at the ICPI show, how many

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1 contractors or installers commented that your
2 product looked like the Beast?

3 A. Probably about the same quantity which
4 would be about six. But that show was more market
5 segmented for distributors than actual contractors,
6 though there were contractors in attendance, but
7 that show is more of an industry show for the
8 distribution market more than anything.

9 Q. When you were at the E.P. Henry show, did
10 any one of the half dozen or so who commented about
11 your product looking like the Beast ask you whether
12 it was BrickStop's product?

13 A. No.

14 Q. At the ICPI show, did any of the half
15 dozen or so contractors who commented and said your
16 product looked like the Beast ask whether it was
17 BrickStop's product?

18 A. No. We were very clear in our literature
19 at that time -- I'm sorry, at the -- after we
20 corrected the literature, but at the booth, it's a
21 Valley View booth showing Valley View product, we
22 have a label on our product, we showed samples at
23 those two shows in Nashville and in Atlantic City
24 that were our product with our name stamped on it

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1 embossed in the product and also with a label on
2 the product.

3 Q. Did anyone ask you whether you got it
4 from the same manufacturer as the Beast?

5 A. No.

6 Q. Did anyone ask you if it was the Beast?

7 A. They did, and I corrected them and said
8 no, this is a Valley View product and here are the
9 design features that are different.

10 Q. How many asked you if it was the Beast?

11 A. Maybe a half dozen.

12 MS. THOMPSON: Asked and answered.

13 MR. BROWN: Q. And was that between both
14 shows, maybe a half dozen asked you if it was the
15 Beast?

16 A. Yes.

17 Q. Have you ever heard of the North American
18 Hardscape Show?

19 A. Yeah, that would have been what I was
20 referring to for the ICPI show.

21 Q. So that's --

22 A. Kind of one in the same.

23 Q. Kind of one in the same?

24 A. I'm sorry, there is an ICPI show and a

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1 Q. So -- and these are the samples that we
2 looked at in that earlier e-mail where he had given
3 you a list of addresses to send samples to?

4 A. Yes, it would have been one of the -- you
5 know, one of the lists.

6 Q. Okay. And -- well, did he send you more
7 than one list?

8 A. I only recall seeing one list -- big
9 list, but there could have been an e-mail here and
10 there that he said, oh, by the way, send it to so
11 and so, but that one document had most of them on
12 there.

13 Q. And then this -- later in the exhibit
14 from the -- basically from the second page on are
15 his notes of the feedback he had received so far?

16 A. Yes. These lists aren't completely
17 restricted to Diamond Paver Edge, it's our other
18 product line as well.

19 Q. Some of the comments refer to other
20 products?

21 A. Yes. So there could have been some
22 customers on here that are not paver people that
23 he's commenting on or I'm asking about.

24 Q. Is there one that you saw that made you

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1 zone about seven years ago.

2 Q. So you've been up against Superior Stone
3 for seven years?

4 A. Yes, but with our Diamond Lok products.

5 Q. And in that time frame, has Superior
6 Stone been carrying the Beast?

7 A. To my recollection, I don't know how long
8 they've been carrying the Beast.

9 Q. Had you ever -- prior to the introduction
10 of the Diamond Paver Edge, had you competed for any
11 accounts with Superior Stone where Superior Stone
12 was selling the Beast and you were selling Diamond
13 Lok?

14 A. I don't recall coming across the Beast
15 that much in my area of sales, and whenever we had
16 business with someone, we didn't have another
17 product outside of Diamond Lok, so there's really
18 nothing else I could sell them. So if we were
19 selling them and they were buying Superior Stone's
20 product or somebody else's product, it was kind of
21 a moot point, we were all in this together and a
22 great majority of the people that we sell are
23 carrying usually another product brand.

24 Q. So you're saying that when you were

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1 Q. Who's Herb Cantu?

2 A. Herb works in our shipping department at
3 Valley View as far as coordinating UPS shipments and
4 requests from myself and the reps as far as getting
5 samples and catalogs out.

6 Q. Okay. So you're requesting him to send a
7 sample to the address indicated below?

8 A. Yes.

9 Q. And that address was -- do you know what
10 the e-mail at the bottom is, does it look to be an
11 e-mail from one of your independent reps to
12 somebody?

13 A. Without seeing the from and to, I'm really
14 drawing a blank on where this was going and who was
15 the end -- who was this dedicated to. It seems like
16 it was from a rep and it went to someone and then
17 they probably copied me on it, because it says
18 "their version," it didn't seem like it came from
19 me, because I would have referred to it as our
20 version, so that's the best I can --

21 MR. BROWN: I wonder, Counsel, if in your
22 copious free time, if we could have someone look
23 and see if that's a rep who sent that e-mail and
24 perhaps give us an unredacted version of that?

Exhibit L

1/8" X 1-3/4" X 8' (160' per box) - Hard Plastic

